

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

IN RE:)	CHAPTER 7
)	
NEWPORT 222 MITCHELL STREET,)	CASE NO. 24-54060-SMS
L.P.,)	
)	
Debtor.)	

**EMERGENCY MOTION FOR AN ORDER SHORTENING NOTICE AND
SCHEDULING EXPEDITED HEARING ON EMERGENCY MOTION FOR
CONFIRMATION THAT STAY IS ALREADY TERMINATED OR, IN THE
ALTERNATIVE, RELIEF FROM THE AUTOMATIC STAY AND RELATED RELIEF**

COMES NOW, Balfour Beatty Construction, LLC (“Balfour” or “Movant”), by and through the undersigned counsel, and herewith files this *Emergency Motion for an Order Shortening Notice and Scheduling Expedited Hearing on Emergency Motion for Confirmation That Stay is Already Terminated or, in the Alternative, Relief from the Automatic Stay and Related Relief* (the “**Motion**”) to obtain an expedited hearing on the *Emergency Motion for Confirmation That Stay is Already Terminated or, in the Alternative, Relief from the Automatic Stay and Related Relief* (the “**Stay Relief Motion**”), respectfully showing the Court as follows:

JURISDICTION AND VENUE

1. This Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334. This is a core proceeding pursuant to 28 U.S.C. § 157(b). Venue before this Court is proper pursuant to 28 U.S.C. §§ 1408 and 1409.

2. The statutory predicates for the relief requested herein are Section 105 of title 11 of the United States Code, 11 U.S.C. §§ 101, *et seq.* (the “**Bankruptcy Code**”) and Rule 9006(c)(1) of the Federal Rules of Bankruptcy Procedure (the “**Bankruptcy Rules**”).

BACKGROUND

3. The relevant factual and procedural background is set forth in the Stay Relief Motion and attachments thereto filed concurrently herewith and are incorporated by reference as if set forth herein.

RELIEF REQUESTED

4. By this Motion, the Movant requests the entry of an order shortening applicable notice periods and scheduling a hearing on an expedited basis to consider the relief requested in the Stay Relief Motion as soon as possible.

BASIS FOR RELIEF

5. Pursuant to Rule 9006(c)(1) of the Bankruptcy Rules, “when an act is required or allowed to be done at or within a specified time . . . , the court for cause shown may in its discretion with or without motion or notice order the period reduced.”

6. The Court may also act to “issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of this title.” 11 U.S.C. § 105(a). “The basic purpose of Section 105(a) is to assure the bankruptcy court’s power to take whatever action is appropriate or necessary in aid of the exercise of their jurisdiction.” 2 *Collier on Bankruptcy* ¶ 105.01 (16th ed. 2015).

7. As set forth more fully in the Stay Relief Motion, the Movant already received relief from the stay to proceed to closure or resolution in its mechanics’ lien foreclosure action in Gwinnett County Case No. 23-A-05346-2 (the “Foreclosure Action”) and believes that the proposed conduct of the Movant to determine the amount due to Movant, liquidate the breach of contract claim, and otherwise resolve the Foreclosure Action is authorized incident to such relief in the Foreclosure Action. Out of abundance of caution in response to the Debtor asserting that the

stay was applicable to the proposed conduct of the Movant, Movant seeks confirmation that the stay is not applicable to the Movant seeking to: a) determine the amount due to Movant; and b) liquidate its breach of contract claim in conjunction with resolving the Foreclosure Action or, in the alternative, relief from the stay to allow Movant to determine the amount due to Movant, liquidate its breach of contract claim, and otherwise resolve the Foreclosure Action. In light of all facts and circumstances presented in the Stay Relief Motion, a prompt resolution of the Foreclosure Action is in the best interests of the Movant, the Debtor, its estate, and its creditors.

8. Time is of the essence in resolving this matter due to the hearing in the Foreclosure Action scheduled on October 16, 2024.

9. In light of the foregoing, the Movant submits that consideration of the Stay Relief Motion on shortened notice as requested herein is justified under the facts and circumstances presented and is in the best interests of the bankruptcy estates and their creditors. Accordingly, the Movant requests that the Stay Relief Motion be heard at the earliest convenience of the Court. The Movant further requests that any response or objection to the relief requested in the Stay Relief Motion be filed and served at least one (1) business day prior to any scheduled hearing date set by the Court.

NOTICE

10. Copies of this Motion and the Stay Relief Motion shall be available as follows: a) upon request of counsel for the Movant and b) in the office of the Clerk, U.S. Bankruptcy Court between 8:00 a.m. and 4:00 p.m. or online anytime at <http://ecf.ganb.uscourts.gov> (registered users) or at <http://pacer.psc.uscourts.gov> (unregistered users).

11. Counsel for the Movant shall serve a copy of the Order and Notice of Hearing granting this Motion and the Stay Relief Motion by hand delivery, facsimile, electronic mail (if

consented to by the recipient), overnight courier (when a street address is available), or by next-day United States mail upon: i) the Office of the United States Trustee; ii) counsel for the Debtor; and iii) parties requesting notice pursuant to Bankruptcy Rule 2002. In light of the nature of the relief requested, no further notice is necessary.

CONCLUSION

WHEREFORE, the Movant respectfully requests that this Court enter an order, substantially in the form attached hereto as Exhibit A, that:

- a) schedules an expedited hearing on the Stay Relief Motion;
- b) approves the notice procedures requested herein in connection with the Stay Relief Motion;
- c) requires any response or objection to the relief requested in the Stay Relief Motion be filed and served at least one (1) business day prior to any scheduled hearing date set by the Court; and
- d) grants the Movant such other and further relief as is just and proper.

Dated: September 24, 2024.

Respectfully submitted,

LAW OFFICES OF HENRY F. SEWELL JR., LLC

/s/ Henry F. Sewell, Jr.

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EXHIBIT A

Proposed Order and Notice of Hearing

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

IN RE:)	CHAPTER 7
)	
NEWPORT 222 MITCHELL STREET,)	CASE NO. 24-54060-SMS
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**ORDER SHORTENING NOTICE AND SCHEDULING EXPEDITED HEARING ON
EMERGENCY MOTION FOR CONFIRMATION THAT STAY IS ALREADY
TERMINATED OR, IN THE ALTERNATIVE, RELIEF FROM THE AUTOMATIC
STAY AND RELATED RELIEF**

PLEASE TAKE NOTICE that Balfour Beatty Construction, LLC (“Balfour” or “Movant”), has filed an *Emergency Motion for an Order Shortening Notice and Scheduling Expedited Hearing on Emergency Motion for Confirmation That Stay is Already Terminated or, in the Alternative, Relief from the Automatic Stay and Related Relief* [Doc. No. __] (the “**Motion**”)¹ in which the Movant requests that the Court hear and consider on an expedited basis the *Emergency Motion for Confirmation That Stay is Already Terminated or, in the Alternative,*

¹ All capitalized, but undefined terms used herein shall be given the meaning ascribed to them in the Motion.

Relief from the Automatic Stay and Related Relief [Doc. No. ____] (the “**Stay Relief Motion**”).

Upon consideration of the Motion, and the other matters reflected in the record and after due deliberation thereon and good and sufficient cause appearing therefor, the Court hereby Grants the Motion as set forth below.

IT IS ORDERED AND NOTICE IS FURTHER GIVEN that a hearing (the “**Hearing**”) on the Stay Relief Motion will be held before the Court at ____:00 a.m. on _____, **2024, in Courtroom 1201, United States Courthouse, 75 Ted Turner Drive, SW, Atlanta, Georgia 30303**, which may be attended in person or via the Court’s Virtual Hearing Room. You may join the Virtual Hearing Room through the “Dial-In and Virtual Bankruptcy Hearing Information” link at the top of the homepage of the Court’s website, www.ganb.uscourts.gov, or the link on the judge’s webpage, which can also be found on the Court’s website. Please also review the “Hearing Information” tab on the judge’s webpage for further information about the hearing. You should be prepared to appear at the hearing via video, but you may leave your camera in the off position until the Court instructs otherwise. Unrepresented persons who do not have video capability may use the telephone dial-in information on the judge’s webpage.

IT IS ORDERED AND NOTICE IS FURTHER GIVEN that your rights may be affected by the Court’s ruling on the Stay Relief Motion. You should read these pleadings carefully and discuss them with your attorney, if you have one in this Case. (If you do not have an attorney, you may wish to consult one.) If you do not want the Court to grant the relief sought in these pleadings or if you want the Court to consider your views, then you and/or your attorney must attend the Hearing and file on or before _____, **2024** (the “**Objection Deadline**”), a written response to the Stay Relief Motion with the Clerk at the address below. If you file a written response, you must attach a certificate stating when, how and to whom (including

addresses) you served the response. Mail or deliver your response so that it is received by the Clerk before the Objection Deadline. The address of the Clerk's Office is Clerk, U. S. Bankruptcy Court, Suite 1340, 75 Ted Turner Drive, Atlanta Georgia 30303. You must also mail a copy of your response to the undersigned at Law Offices of Henry F. Sewell, Jr., LLC, Attn: Henry F. Sewell, Jr., 2964 Peachtree Road, NW, Suite 555, Atlanta, Georgia 30305;

IT IS FURTHER ORDERED that copies of this Order and Notice of Hearing granting the Motion and the Stay Relief Motion shall be available as follows: 1) upon request of counsel for the Movant; and 2) in the office of the Clerk, U.S. Bankruptcy Court between 8:00 a.m. and 4:00 p.m. or online anytime at <http://ecf.ganb.uscourts.gov> (registered users) or at <http://pacer.psc.uscourts.gov> (unregistered users) and that no further notice shall be required.

IT IS FURTHER ORDERED that counsel for the Movant shall: 1) serve a copy of this Order and Notice of Hearing granting the Motion and the Stay Relief Motion by hand delivery, facsimile, electronic mail (if available), overnight courier (when a street address is available), or by next-day United States mail upon: i) the Office of the United States Trustee; ii) counsel for the Debtor; and iii) parties requesting notice pursuant to Bankruptcy Rule 2002. A copy of this Order and Notice shall also be mailed to all creditors and parties in interest. No further notice is necessary and counsel for the Movant shall promptly file a Certificate of Service with this Court evidencing such service.

IT IS FURTHER ORDERED that the Court shall retain jurisdiction with respect to all matters arising from or related to the implementation, interpretation, and/or enforcement of this Order and Notice of Hearing.

*****END OF DOCUMENT*****

Prepared and Presented By:

LAW OFFICES OF HENRY F. SEWELL JR., LLC

/s/ Henry F. Sewell, Jr.

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Counsel for Balfour Beatty Construction, LLC, Movant

DISTRIBUTION LIST

Henry F. Sewell, Jr.
2964 Peachtree Road, NW, Suite 555
Atlanta, Georgia 30305

Office of the United States Trustee
362 Richard B. Russell Federal Bldg.
75 Ted Turner Drive, SW # 362
Atlanta, Georgia 30303

Michael F. Holbein
Smith, Gambrell & Russell, LLP
1105 West Peachtree St., N.E.
Suite 1000
Atlanta, GA 30309

S. Gregory Hays, Trustee
Hays Financial Consulting, LLC
Suite 555
2964 Peachtree Road
Atlanta, GA 30305

CERTIFICATE OF SERVICE

The undersigned hereby certifies that the within and foregoing *Emergency Motion for an Order Shortening Notice and Scheduling Expedited Hearing on Emergency Motion for Confirmation That Stay is Already Terminated or, in the Alternative, Relief from the Automatic Stay and Related Relief* was served via the Court's ECF system to all parties registered with the system who have filed appearances and requested notices and via first class U.S. Mail, with adequate postage prepaid, on the following persons or entities at the addresses stated:

Office of the U.S. Trustee
362 Richard Russell Federal Building
75 Spring Street, SW
Atlanta, GA 30303

Michael F. Holbein
Smith, Gambrell & Russell, LLP
1105 West Peachtree St., N.E.
Suite 1000
Atlanta, GA 30309
Via ECF

S. Gregory Hays, Trustee
Hays Financial Consulting, LLC
Suite 555
2964 Peachtree Road
Atlanta, GA 30305
Via ECF

Dated: September 24, 2024.

LAW OFFICES OF HENRY F. SEWELL JR., LLC

/s/ Henry F. Sewell, Jr.

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